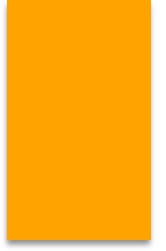




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2022 Medicaid Basics & Current Trends

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Disclaimer

- **Please note:** The following content is for informational purposes only. It is not to be interpreted as legal advice and the information contained is not necessarily applicable to your specific case.



Welcome

- ▶ Introduction
- ▶ Overview of our agency
- ▶ Topics
 - ▶ Medicaid/MLTC
 - ▶ Common MLTC Legal Issues
 - ▶ Pooled Trusts – very brief introduction
 - ▶ Questions



Medicaid Overview

- ▶ What is Medicaid?
- ▶ Who is eligible?
- ▶ What does Medicaid cover?



Resource and Income Limits 2022

Community Medicaid: Disabled, Aged (65+) Blind Applicants/Recipients (Non-MAGI):

- ▶ Resources: (includes savings/checking accounts, CDs, stocks, other liquid savings):
 - **Living Alone \$16,800**
 - **Couple \$24,600**

- ▶ Income:
 - **Living Alone \$934**
 - **Couple \$1,367**



Medicare Savings Program (MSP)

Funded by the State Medicaid program, **Medicare Savings Programs (MSPs)** help eligible individuals meet some or all of their cost-sharing obligations under Medicare. *See* N.Y. Soc. Serv. L. § 367-a(3)(a), (b), and (d). There are three separate MSP programs, the Qualified Medicare Beneficiary (QMB) Program, the Specified Low Income Medicare Beneficiary (SLIMB) Program and the Qualified Individual (QI) Program.

NOTE: You can divert excess income into a Pooled Trust in order to qualify for an MSP program **WITHOUT** applying for full Medicaid benefits. If you do receive Medicaid and divert your excess income into a pooled trust, you likely qualify for an MSP. If you are not automatically screened, you should speak to your LDSS.



Medicare Savings Programs (MSP)

New Medicaid Limits in 2023 - Aged, Blind & Disabled

Benefit	% FPL		SINGLES		COUPLES	
	2022	2023	2022	2023	2022	2023
Income limit per Month						
Medicaid	82%	138%	\$934	\$1563	\$1,367	\$2,106
QMB	100%	138%	\$1,133	\$1563	\$1,526	\$2,106
QI-1	135%	186%	\$1,529	\$2107	\$2,060	\$2,838
Medicaid Asset Limit			\$16,800	\$28,134	\$24,600	\$37,908



Income Spend Down

When an individual or couple has income in excess of their monthly limit, they can still be eligible for Medicaid with a Spenddown (DAB category ONLY). You have several options to meet this limit:

1. Submit unpaid Medical bills equal to the excess income to DSS;
2. Pay the excess income amount directly to DSS or MLTC plan; or
3. A disabled individual may divert excess into a *Supplemental Needs Trust/Pooled Trust* to deposit “excess” income monthly. Money put into the trust is exempt from Medicaid, so the spenddown is reduced or eliminated.

*NOTE: A married couple with only one Medicaid recipient may not use a pooled trust and spousal impoverishment budgeting together – they must choose one or the other.



Managed Long Term Care Plans

- MLTC plans are insurance plans that are paid a monthly capitated rate by the New York Medicaid program to approve and provide Medicaid home care and other long-term care services to people who need long-term care because of a long-lasting health condition or disability.
- The MLTC plans decide how many hours you may receive and arrange for the care by a network of providers. They also approve, manage and pay for other long-term care services.



Who Must Enroll in MLTC Plans?

- ▶ As of December 2014, any Medicaid recipient:
 - ▶ over the age of 21
 - ▶ who is eligible for both Medicaid and Medicare (dually eligible)
 - ▶ who requires over 120 days of skilled nursing care*

***Note:** From 2014 until July 2020, this type of Medicaid covered long-term home care and institutionalized nursing home care. In 2018, New York State decided to carve out nursing home care from MLTC and transition it back to fee-for-service Medicaid. The implementation was delayed until July 2020. **Happening now**, nursing home residents in MLTC plans should have already received disenrollment letters from their plans and they will be automatically enrolled in fee-for-service Medicaid.



First-Time Enrollment in a MLTC Plan

1. Apply for Medicaid at your local DSS.
2. Contact NY Medicaid Choice, the enrollment broker, to schedule a “conflict-free assessment” to determine long-term care eligibility. Contact 1-888-401-6582 for assistance.
3. When approved: member has 75 days to choose a plan or they will be automatically assigned one.
4. You will be assessed again by the MLTC plans you want to pursue in order to create your personalized care plan.

Institutional Medicaid

- ▶ Now under Fee-for service in which a provider is paid for every Medicaid-eligible service rendered to a beneficiary.
- ▶ Covers all costs associated with residence inside of Skilled Nursing Facilities.
- ▶ Has different income and asset requirements for eligibility than community Medicaid



Important Changes to Medicaid Enrollees' Appeal and Fair Hearing Rights – Effective May 1, 2018

- ▶ Enrollee is entitled to written notice at least 10 days before the plan says it will reduce or stop any services (this is unchanged).
- ▶ **EXHAUSTION REQUIREMENT:** Enrollee **MUST** first request an **Internal Plan Appeal** and receive a **Final Adverse Determination BEFORE** requesting a State Fair Hearing. Enrollee has **60 days** to make this request.
- ▶ Enrollee may request an Internal Plan Appeal orally via telephone but must follow up an oral request with a written request by mail or fax. Enrollee must give written authorization to anyone requesting an appeal on their behalf, or the appeal may not be processed.



Important Changes to Medicaid Enrollees' Appeal and Fair Hearing Rights – Effective May 1, 2018

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- ▶ **Aide Continuing** must be requested **twice** during the appeals process – you must request aide continuing directly from the plan before the proposed reduction or denial goes into effect – essentially, Enrollees have approximately 10 days to request aide continuing at this stage. Once you receive a Final Adverse Determination from the Plan, you must again request aide continuing from OTDA when you request a State Fair Hearing. This request must also occur within 10 days of the Final Adverse Determination, even though you have 120 days to request a Fair Hearing.
- ▶ **Enrollees have 120 days to request a State Fair Hearing** from the date of the Final Adverse Determination. **Only Exception:** if Plan fails to timely respond to Internal Plan Appeal, Enrollee may request a State Fair Hearing without receiving a Final Adverse Determination from the Plan.



Major Medicaid Issues in WNY

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- Staying in the Community
- **Transitioning from a Rehab/SNF back to the Community**
- Budgeting
- Environmental Mods
- **Staffing Issues:**
 - Major Issue in rural areas more than the city of Buffalo
- Major Issue in suburbs with limited access to public transportation
- Why are there staffing issues? Money and transportation, Covid-19



Issues to Watch for Due to Recent Changes

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- Confusion about appeal rights
- Plans sending old notices describing old appeal rights
- Even more staffing issues due to contracting limitations and Covid-19
- Difficulty transitioning home from SNF due to disenrollment from MLTC
- Plan transition issues – plans will likely drop out and beneficiaries will have to transition into a new MLTC Plan
- Problems with response to internal appeals



Questions?


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Community Medicaid Waiver Programs and Pooled Supplemental Needs Trusts

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How To Pay For Long Term Care Costs

Long Term Care Insurance

- Can be costly to purchase/premium increases.
- You may not qualify medically.
- Your coverage may not be sufficient (daily benefit and/or lifetime coverage).

Private Pay

- Client uses his or her own assets and income.
- For 24-hour home care, the costs can exceed the cost of a nursing home. Most agencies charge between \$25/hour and \$35/hour. (\$25/hour x 24 hours a day = \$18,600 for a 31/day calendar month)

Medicaid

- Must be at or below certain resource and income levels in order to qualify.

Community Medicaid Waiver Programs

- ▶ These programs can provide payment for home care and social day care programs to help people remain in their homes and out of nursing homes.
- ▶ There are two Waiver programs of particular importance for seniors:
 - ▶ Managed Long Term Care (MLTC) Program: Helps with task-oriented needs and assistance with activities of daily living (dressing, bathing, transferring, meal preparation etc.) Also pays for some therapy and social day care programs. Typically a person does not receive 24 hour care under this program.
 - ▶ Nursing Home Transition and Diversion (NHTD) Waiver: Provides oversight and supervision in the form of home care for people who have a cognitive issue (dementia, Alzheimer's disease, or lack of safety awareness). Most recipients are likely to get more hours of care under this program than the MLTC program.

Why Consider a Community Medicaid Waiver Program?

► Advantages

- You can remain in your home/apartment and receive additional care without going into an assisted living facility or skilled nursing home facility.
- You can preserve assets and income from privately paying for assisted living costs and skilled nursing home costs.

► Disadvantages

- It can take 3-6 months before Medicaid is approved and services are in place. Most people need the care immediately.
- There are severe staffing issues, especially when someone lives in a rural area and if they need 24 hour care it is not always possible to obtain that many hours.

Resource Allowances for Community Medicaid Waiver Programs

Married Couples

- ▶ Community spouse can keep \$74,820 in countable (non-exempt) assets.
- ▶ The Medicaid applicant spouse can keep \$16,800 in countable (non-exempt) assets.
- ▶ Primary residence is exempt (up to \$955,000 in value).
- ▶ Retirement accounts of any value that are in pay out status are exempt.
- ▶ Combined Life insurance with a face value of \$1,500 or less per person is exempt.
- ▶ One vehicle of any value is exempt.
- ▶ Pre-paid irrevocable burial accounts are exempt.

Single individuals

- ▶ Medicaid applicant can keep \$16,800 in countable (non-exempt) assets.
- ▶ Primary residence is exempt (up to \$955,000 in value).
- ▶ Retirement accounts that are in payout status are exempt.
- ▶ Combined Life insurance with a face value of \$1,500 or less is exempt.
- ▶ One vehicle is exempt.
- ▶ Pre-paid irrevocable burial account is exempt.

Medicaid Income Allowances- Community Medicaid Waiver Programs

Married Couples

- ▶ There are 2 methodologies DSS uses to budget Income for a married Couple. Applicant can choose the method that is more advantageous for him/her and his or her spouse:
 - ▶ If the well spouse's income is over \$3,435, he or she can keep all of his or her income (it is completely disregarded). In this scenario only the Medicaid applicant's income is considered and he or she can keep \$934 a month.
 - ▶ If the Well's spouse's income is below \$3,435, the Medicaid applicant's income can be contributed to the Well spouse to bring him/her income up to the \$3,435 level. In that scenario, the Medicaid applicant can only keep \$433.
 - ▶ Additional allowances from the income are given to the well spouse and Medicaid applicant to pay for health insurance premiums.

Single Individuals

- ▶ The Medicaid applicant can keep \$934 a month.
 - ▶ Additional allowance given for applicant to pay for health insurance premium.
 - ▶ Any income over these allowances is considered excess income. The excess income also known as a "spend down" must:
 - ▶ Be paid to the agency providing care to the applicant or DSS; or
 - ▶ The applicant must prove to the County that he/she has incurred medical bills each month equal to or greater than the spenddown amount before Medicaid is activated for the month; or
 - ▶ Divert the excess income into a pooled supplemental needs trust. By using a pooled supplemental needs trust an individual can shelter this excess income so that County pays 100% of his/her medical expenses. This trust can then be used to pay for supplemental goods and services not paid for by Medicaid

How Can I Financially Qualify for a Community Medicaid Waiver Program?

- ▶ The 5 year look back only applies for skilled nursing home Medicaid. As of October 1, 2020 a 30 month look back was supposed to be instituted for some (but not all) of the community Medicaid long-term care programs, most notably the managed long term care program (MLTC) and the assisted living program (ALP). However, this 30 month lookback still has not been implemented due to the Public Health Emergency and Federal funding to NY for COVID. Per the Director of the NYS Department of Health's enrollment and eligibility division, if the look back is implemented, NYS would have to first obtain a waiver from CMS and assuming it did, it is not likely that the look back would be implemented until 2024. Further, at that time the State intends to only apply the sanction on new Medicaid applications and not when recertifying people who are already receiving community Medicaid long-term care services.
- ▶ As such, there are still planning strategies that one can take advantage of to financially qualify for Community Medicaid benefits even if their resources are over the current thresholds.

Ways to Financially Qualify for Community Medicaid

- ▶ Spend down excess resources on exempt assets (i.e. purchase a new vehicle, items for home, home improvements, pre-pay burials, etc.
- ▶ Gift excess resources to children or other family members; or
- ▶ Establish a Medicaid Asset Protection Trust (MAPT) and transfer excess resources into it.

Outright Gifts

▶ Advantages:

- ▶ Less costly option than a trust (with respect to legal fees).
- ▶ Relatively simple to implement and no administration once gift is complete.

▶ Disadvantages:

- ▶ Your children/recipient of the gift control the money and can spend it as they so desire. Money may not be available to return to you if you later need nursing home care.
- ▶ The assets could be available to pay your children's/gift recipient's creditors.
- ▶ If your child dies, these assets could be distributed in accordance with his or her Will or via the laws of intestacy. This may or may not match your wishes for the ultimate distribution of these funds and/or be available to return to you if you need nursing home care.
- ▶ Your children take the assets subject to your cost basis, which could lead to adverse capital gains tax consequences when they sell them (real property, stocks, mutual funds etc.)

Medicaid Asset Protection Trust

► Advantages:

- Avoids Probate.
- 5 year clock starts when the assets are re-titled into the trust (in case you or your spouse later require nursing home care).
- Protects assets from your children's creditors.
- Grantor can change the beneficiaries with limited power of appointment.
- Grantor can change the trustees.
- Grantor can limit distributions to third party beneficiaries or provide for no distributions of principal during his or her lifetime.
- The beneficiaries of the trust receive a stepped-up basis on most assets (real property, stocks, mutual funds) that they receive from the trust at the Grantor's death (exception: annuities, US Savings Bonds).
- Most of these trusts are structured as a grantor trust for income tax purposes so all of the income is claimed by the Grantor on his or her personal returns so there is no change in your tax liability and there is no income tax liability to the Trustees.

► Disadvantages:

- Legal fees.
- More complicated to implement and administer than an outright gift.

Funding the Trust

- ▶ How much money should go into the trust?
 - ▶ If the goal is to immediately apply for a Community Medicaid Waiver program, all assets over the resource allowances previously discussed (depending upon whether the person is a single individual or married) would have to go into the trust.
- ▶ What types of assets can go into the trust?
 - ▶ Almost all kinds of assets (i.e. real property, stocks, bonds, cash, bank accounts, mutual funds, annuities etc.) except retirement accounts as they are already exempt assets for Medicaid purposes.

Can changes be made to the Trust once it is set up?

- The Grantor can retain a limited power of appointment to change the beneficiaries.
- The Grantor can retain the power to change Trustees.
- The Grantor can amend, partially revoke or completely revoke the trust if all interested parties consent per New York Estates Powers Trust Law (EPTL) section 7-1.9. This is important if someone needs nursing home care prior to the expiration of the 5 year look back period.



Pooled Supplemental Needs Trusts

What is a Pooled Supplemental Needs Trust?

- ▶ A type of Supplemental Needs Trust (“SNT”).
- ▶ A tool that can be used to enhance the quality of life for individuals with disabilities. The trust can be used to purchase additional items and services not paid for by government benefits. This trust is intended to supplement and not supplant (or replace) the disabled person’s government benefits.
- ▶ Has multiple beneficiaries who pool their resources together for investment purposes.

What are the Eligibility Requirements to enroll in the pooled trust?

- ▶ The individual must be disabled per Social Security standards and receive Medicaid benefits.
- ▶ If the person is over 65 years of age, a separate determination of disability is required by the Department of Health if the person was not receiving Social Security Disability or Supplemental Security Income benefits prior to age 65.
- ▶ Paperwork to prove disability:
 - ▶ 1 page DOH form that the primary physician must complete and a 5 page Disability Questionnaire that the client or family must complete
 - ▶ This paperwork is to be filed through the local Medicaid office who sends it to the Department of Health in Albany

Why would an individual need a Pooled Trust?

- ▶ Government Benefits have Income/Resources Limits
 - ▶ Medicaid Resource Limit: \$16,800
 - ▶ Medicaid Monthly Income Limit: \$934
 - ▶ Supplemental Security Income (SSI) Resource Limit: \$2,000 (individual)
- ▶ Remain at home
- ▶ Maintain a better quality of life
 - ▶ Achieve the above without complete loss of resources or income

1st party trust Pooled Supplemental Needs Trust

- ▶ Established by the disabled individual. His or her income and/or assets will be put into the trust.
- ▶ No Transfer penalties for SSI apply if the individual is under age 65.
- ▶ It is unknown if a transfer penalty will apply for community Medicaid waiver programs if the 30 month look back is implemented.
- ▶ Transfer penalties will apply for skilled nursing home Medicaid once a person is over 65.
- ▶ Trust ends at disabled beneficiary's death. No disbursements can be made at that time. Any monies remaining in the trust at the death of the disabled beneficiary have to remain in the trust and cannot be paid to the beneficiary's family etc.

What type of money would an individual deposit into the 1st Party trust?

- ▶ Excess Income/Medicaid Spenddown (Any money over the \$934 limit)
- ▶ Direct inheritance
- ▶ Retroactive Social Security Award
- ▶ Personal Injury Settlements
- ▶ Structured Settlement
- ▶ Excess Resources

3rd Party Pooled Supplemental Needs Trust

- ▶ Established by a third party (parent, friend or other family member) of the disabled beneficiary. The third party also contributes his or her money or other assets to the trust for the benefit of the disabled beneficiary.
- ▶ Can be set up during the third party's lifetime or through his or her Will or living trust.
- ▶ 15% of the net income and principal remaining in the Beneficiary's account at death stays with the trust, 85% of the net income and principal remaining in the Beneficiary's account will be distributed by the Trustees to whomever the third party directs.

Eligible Disbursements for non SSI recipients (Medicaid Only)

Generally the trust can pay living expenses:

- ▶ Rent
- ▶ Mortgage
- ▶ Condo Maintenance
- ▶ Home/Renters insurance
- ▶ Repairs/Maintenance
- ▶ Property taxes
- ▶ Utilities
- ▶ Phone and cable bills
- ▶ Furniture
- ▶ Pre-need funeral arrangements
- ▶ Groceries for beneficiary
- ▶ Car Payments/Insurance
- ▶ Adult diapers
- ▶ Other personal needs
- ▶ Purchases appropriate for beneficiary
- ▶ travel and vacation costs
- ▶ Transportation/Vehicle expenses (owned by beneficiary)

Eligible Disbursements for SSI recipients

- ▶ Vacation
- ▶ Furniture
- ▶ Adaptive Equipment
- ▶ Transportation
- ▶ Computer
- ▶ Gym Membership
- ▶ Education (of beneficiary)
- ▶ Car Payments/Insurance
- ▶ Sporting Goods
- ▶ Pre-need funeral arrangements
- ▶ Non-food/shelter expenses:
 - Telephone/cell phone
 - Cable
 - Internet

Disbursement Requirements

- ▶ All purchases from the trust must receive preapproval (beneficiaries cannot purchase something and expect the Pooled Trust to pay for it)
- ▶ Distribution request forms must be completed and signed (emailed, faxed, mailed, or submitted on the website)
- ▶ Supporting documentation (estimates etc.) must be submitted
- ▶ The Pooled Trust only pays licensed agencies/providers or companies (homecare, professional services, lawn care, snowplowing, etc.)

Prohibited Disbursements

- ▶ Cash to beneficiary or bank accounts
- ▶ Items for others (sole benefit)
- ▶ Capital improvements to property not owned by beneficiary
- ▶ Both rent and mortgage/property taxes, etc.
- ▶ Items covered by government benefits
- ▶ Alcohol, firearms, illegal activity
- ▶ Purchase of a car that is not for the beneficiary

Steps to take to apply for the Pooled Trust

- ▶ Apply for Medicaid.
- ▶ Complete and submit Disability Paperwork, if necessary (over 65 or not receiving SSD or SSI).
- ▶ Complete application and submit with proof of income, spenddown letter from Medicaid, proof of disability, authorized contacts, POA/Guardianship/Court documents, Joinder Agreement (meeting with an attorney), any other required documents
- ▶ Local Pooled Trust is Western NY Coalition Pooled Trust. Website is: wnypooledtrust.org



The Interplay of Medicaid Asset Protection Trusts and Pooled Supplemental Needs Trusts

If a person has established a Medicaid asset protection trust and later applies for a community Medicaid waiver program to obtain home care, he or she can (and hopefully will still be able if the new lookback rules are implemented) establish a pooled supplemental needs trust to shelter his or her excess income for Medicaid purposes. As such, in that scenario both trusts can be used in conjunction with each other to protect assets and income from long term care costs.